

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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DARRELL D. SMITH,

Case No. 23-CV-1674 (KMM/JFD)

Petitioner,

v.

**REPORT AND RECOMMENDATION**

B. EISCHEN,

Respondent.

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On June 5, 2023, the Clerk of this Court sent Petitioner Darrell D. Smith a letter indicating that (1) the Court had not received either this action's filing fee or an application to proceed *in forma pauperis* ("IFP") in this action; (2) Mr. Smith had 15 days (i.e., until June 20, 2023) to submit the fee or an application; and (3) if Mr. Smith failed to do so, his case "could be summarily dismissed without prejudice." (Dkt. No. 2 at 1.)

That deadline has now passed, and Mr. Smith has not submitted a filing fee or an IFP application. (Indeed, he has not communicated with the Court at all since filing this action.) Accordingly, this Court now recommends dismissing this action without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute. *See, e.g., Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

### RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT** this action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

Dated: July 5, 2023

s/ John F. Docherty  
JOHN F. DOCHERTY  
United States Magistrate Judge

### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).